

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**SANDRA FORTIER and PAUL OLSON,
on behalf of O.O., a minor child,**

Plaintiffs,

v.

No. 1:16-CV-00482

**THE NEW MEXICO HUMAN SERVICES
DEPARTMENT and THE NEW MEXICO
DEPARTMENT OF HEALTH; BRENT
EARNEST, Secretary, New Mexico Human
Services Department, in his official capacity;
LYNN GALLAGHER, Acting Cabinet Secretary;
New Mexico Department of Health, in her official
capacity; CATHY STEVENSON, Director,
Developmental Disabilities Supports Division of
the New Mexico Department of Health; in her
official capacity; NANCY SMITH-LESLIE,
Director, Medical Assistance Division of the New
Mexico Human Services Department, in her
official capacity,**

Defendants.

MOTION TO DISMISS

Defendants, the New Mexico Human Services Department and the New Mexico Department of Health and Brent Earnest, Lynn Gallagher, Cathy Stevenson and Nancy Smith-Leslie in their official capacities ("Defendants"), by and through their attorneys of record, Miller Stratvert P.A., in lieu of filing an answer, move to dismiss Plaintiffs' First Amended Complaint in its entirety, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim for which relief can be granted.

In support of this motion, Defendants file their Memorandum Brief herewith.

Pursuant to D.N.M.LR-Civ. 7.1(a), undersigned counsel for Defendants made a good-faith request for concurrence by Plaintiffs. On June 9, 2016, undersigned counsel for Defendants e-mailed a complete draft of this Motion and its supporting Memorandum to counsel of record for Plaintiffs. Plaintiffs oppose this Motion.

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Jennifer D. Hall

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I hereby certify that on the 10th day of June, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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